

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN MONTUE,

Petitioner,

No. CIV S-04-1697 FCD JFM P

vs.

MIKE KNOWLES, et al.,

Respondents.

ORDER

Petitioner is a state prisoner proceeding through counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a March 13, 2002 decision of a panel of the California Board of Prison Terms (Board) to deny him a parole date. This matter is before the court on respondents' motion to dismiss.

Respondents contend that petitioner has no federally protected liberty interest in parole under California law and, therefore, that this court lacks subject matter jurisdiction. To support that contention, respondents rely on an order of the district court in Sass v. California Board of Prison Terms, 376 F.Supp.2d 975 (E.D.Cal. 2005). The Sass case is set for oral argument in the United States Court of Appeals for the Ninth Circuit on March 16, 2006. Good cause appearing, respondents' motion will be denied without prejudice to its renewal, as appropriate, not later than thirty days after any decision by the court of appeals in Sass.

1 In accordance with the above, IT IS HEREBY ORDERED that respondents'
2 August 9, 2005 motion to dismiss is denied without prejudice.
3 DATED: February 21, 2006.

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6 UNITED STATES MAGISTRATE JUDGE
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